



Statement for the Record

Hearing on

Framework for Evaluating
Certain Expiring Tax Provisions

Before

Subcommittee on Select Revenue Measures
Committee on Ways and Means
The U.S. House of Representatives

June 8, 2012

By

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Food Donation Connection

Statement for the Record of Food Donation Connection

U.S. House of Representatives, Committee on Ways and Means Subcommittee on Select Revenue Measures

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Chairman Tiberi, Ranking Member Neal, and members of the House Subcommittee on Select Revenue Measures, thank you for the opportunity to submit this statement for the record on behalf of Food Donation Connection (FDC). One of the most beneficial tax laws within the list of expired tax provisions is the **enhanced charitable deduction for food inventory**. This provision encourages the donation of surplus, wholesome food to the needy through an incentive to foodservice companies. This tax incentive serves to offset the time and expense required for these companies to safely save and donate surplus food to non-profit organizations.

The current economic climate has intensified the needs of charities seeking to feed the nation's hungry. Feeding America reports that since 2006, the demand for food assistance in their national network of food banks has increased by 46%. One successful approach to meet this need is to redirect surplus, wholesome food from restaurants, universities, hospitals and other foodservice companies to food banks and hunger relief organizations.

There are many reasons for extending the food donation provision now, bridging the gap since expiration, and then making it permanent with the proposed House Bill HR 3729. Before I elaborate on those reasons, I'd like to explain Food Donation Connection's role in this process. Since 1992, FDC has assisted companies nationwide in establishing programs to safely donate their surplus food to local hunger relief agencies. FDC's vision is to "let nothing be wasted," and the company has coordinated the donation of more than 230 million pounds of wholesome prepared food from nearly 14,000 locations to over 7,900 non-profits helping people in need. We currently partner with a wide range of companies and organizations including Darden Restaurants (Red Lobster, Olive Garden, LongHorn, Seasons 52, Bahama Breeze, Capital Grille), Yum! Brands (Pizza Hut, KFC, Taco Bell), The Cheesecake Factory, Chipotle Mexican Grill, Bob Evans, Mimi's Café, HMSHost, ARAMARK, St Jude Children's Hospital, Starbucks Coffee Company, and others.

Reasons to Extend the Charitable Food Donation Deduction

There are several reasons for extending the food donation provision and then following up by making it permanent with HR 3729. The food donation enhanced tax deduction provision for non-C corporations will:

- Serve a **valid policy goal** of encouraging food donations by offsetting the costs incurred by donors and provide an economic incentive to donate rather than dump surplus food.

- Result in **tax fairness**. This provision results in a just tax code since non-C corporations would be allowed the same enhanced deduction as C corporations.
- Promote the **equity in society** by helping the non-profits that help people in need.
- Inexpensively accomplish the policy goal by **efficiently using public funds**. For example, a donated \$10 pizza results in a \$1.17 tax savings for the donor, which costs the government \$1.17 in lost revenue. The cost to the government for providing this food to those in need is considerably less than the retail price it would pay for a similar product.
- Allow for **proper tax planning** for non-C corporations and good stewardship of wholesome surplus food that can help people in need.

Katrina Emergency Tax Relief Act (KETRA)

When Hurricane Katrina devastated the Gulf Coast in late August, 2005, Congress passed KETRA to make it possible for *all* business entities to take the enhanced tax deduction allowed by Section 170(e)(3). This meant that non-C corporations like S corporations, Partnerships, and Sole Proprietorships could take the same enhanced deduction as C corporations. The law, which expired at the end of 2011, was previously extended on three occasions with the Pension Protection Act of 2006, the Emergency Economic Stabilization Act of 2008, and the Middle Class Tax Cut Act of 2010. While these measures have helped to meet the needs of hungry individuals, this bi-annual, retroactive tax extender approach makes it difficult for potential food donors to undertake adequate tax planning.

HR 3729 - Permanently Extend and Expand the Charitable Deduction for Contributions of Food Inventory

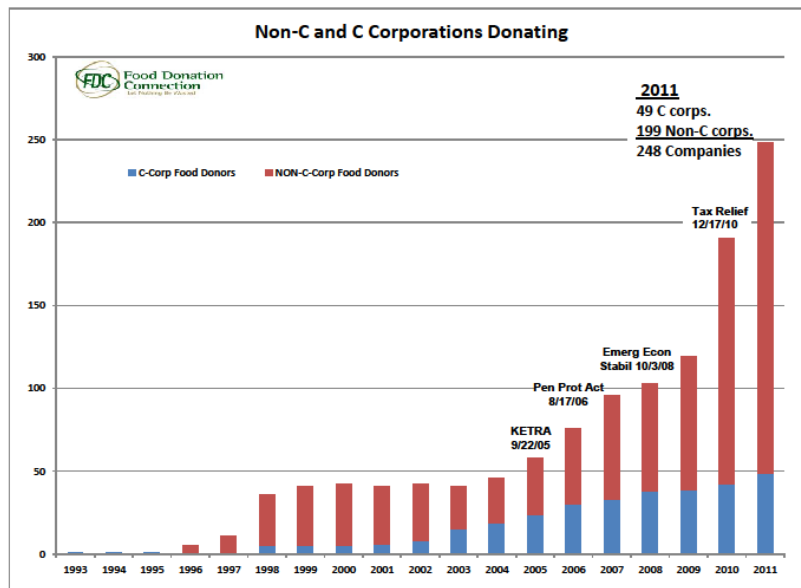
The uncertainty of incentive longevity and lapses in the charitable deduction provision increase the difficulty of convincing non-C corporation business owners to donate food. Many things compete for the attention of business managers and as an unfortunate result wholesome food continues to be thrown away at many foodservice locations. FDC supports the permanent expansion of Section 170(e)(3) to *all* food industry businesses as proposed in HR 3729, introduced in December of 2011 by Representatives Geoff Davis and Sander Levin.

The language included in HR 3729 provides an enhanced tax deduction for all business taxpayers and codifies an important tax court ruling regarding valuation for food donations. Specifically, this legislation would do five things:

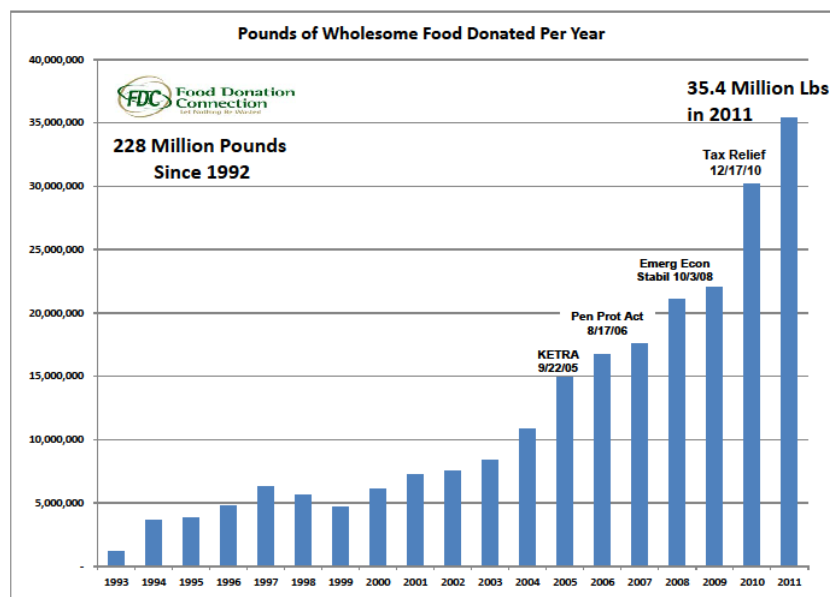
- Make permanent the provision to allow small businesses (non-C corporations) to apply the enhanced deduction for contributions of food inventory;
- Change the cap on charitable deductions from 10% to 15% in an effort to increase the amount of food donated to individuals in need;
- Codify the definition of fair market value as the price at the time of the contribution without regard to internal standards or lack of market;
- Allow taxpayers using the cash method of accounting to deduct 25% of the fair market value of food donated (this generally affects farmers and ranchers); and
- Allow non-C corporations to carry forward the charitable deduction for 5 years, to mirror the treatment of C corporations.

Tax Law Impact

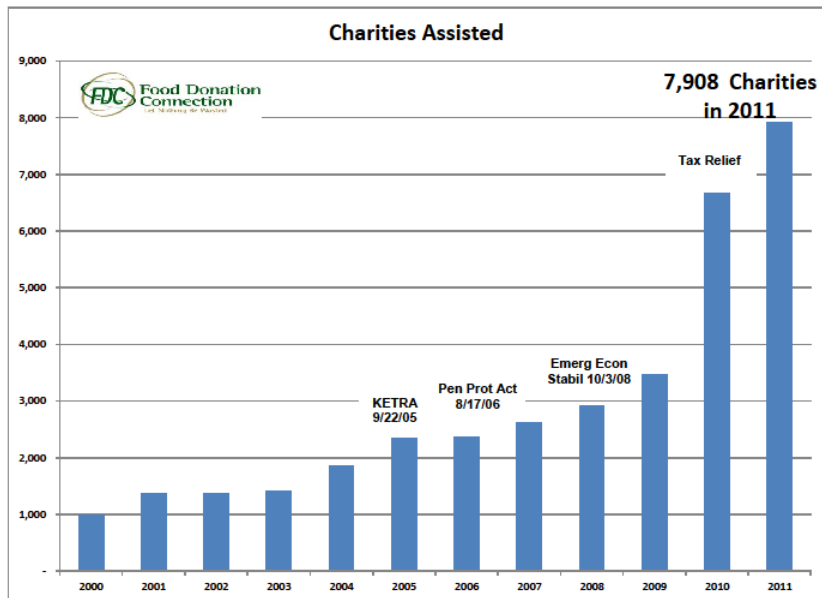
FDC is uniquely positioned to examine the effect of expanding Section 170(e)(3) to all business taxpayers in the foodservice industry. We track the donations of nearly 14,000 foodservice locations. FDC's role in coordinating food donation programs allows us to measure the impact with data that is not collected on tax returns. The following charts illustrate the benefit of expanding Section 170(e)(3) to non-C corporations.



The first chart, ***Non-C and C Corporations Donating***, illustrates the increase in the number of non-C corporations participating in the FDC's food donation program when the tax law was extended to non-C corporations.



The second chart, ***Pounds Donated***, graphically illustrates the increase in pounds of food donated in conjunction with the KETRA extensions.



The third chart, **Charities Assisted**, illustrates the increased number of organizations helped as a result of the KETRA and subsequent extensions.

All three charts illustrate the growth in donations from companies involved in FDC's Harvest Program, in part due to the expansion of Section 170(e)(3) in 2005 and subsequent extensions. Another extension is critical to keep food from non-C corporations from being discarded.

Pertinent History

The fundamental features of HR 3729 have been previously examined and agreed upon in bipartisan bills designed to expand the capacity of individuals and organizations to serve those in need - the Charitable Giving Act, HR 7 and the CARE Act, S. 476.

"In the 108th Congress, the CARE Act, S.476, passed the Senate by a vote of 95-5. The House of Representatives passed companion legislation, the Charitable Giving Act, H.R. 7 by a vote of 408-13. Tragically for those in need, the bill was chosen as the first bill to not be allowed to go to conference after passage by both chambers and thus prevented from becoming law in the last Congress."⁽¹⁾

⁽¹⁾ Senator Rick Santorum, Chairman of the Subcommittee on Social Security and Family Policy, Senate Finance Committee, September 13, 2005.

In closing, please consider the following, typical comment from a recipient hunger relief agency, concerning the impact of prepared food donations. Stephanie Paine, Director of Food Service for the San Diego Rescue Mission writes:

...The donations of pizza from Pizza Hut and chicken wings, rice, mashed potatoes, corn on the cob and macaroni & cheese from KFC have increased the nutritional value of the food we had available and the men, women and children that receive these meals have been so grateful to have more variety in the weekly menus. We collect enough of the Pizza Hut and KFC items to serve three meals a week! And we serve 500 people at each

meal. That is 1500 free meals that would otherwise be thrown away if these restaurants didn't donate to our organization...

As you consider the best ways to address tax extenders and help end hunger throughout the United States of America, please remember that food donation programs provide free prepared food to non-profit organizations in local communities, resulting in an immediate impact on the lives of less fortunate individuals in need of food. Surplus food donations re-direct wholesome food – otherwise destined for a landfill – to the stomachs of hungry people.

Extending the food donation tax law and ultimately passing a permanent law outlined in HR 3729, would fulfill the original intent of the Section 170(e)(3) legislation by allowing non-C corporations to take advantage of a charitable deduction for their contributions of food inventory. The provision makes efficient use of public funds for a valid policy goal while creating tax code parity for non-C corporations and C corporations.

Thank you for your efforts to make a difference in the lives of thousands of people by extending the enhanced charitable deduction for food inventory and ultimately making this legislation permanent tax law.

Sincerely,

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